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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

RICHARD JAGGARD and JUDY
JAGGARD,

Plaintiffs,

vs.

ABBOTT LABORATORIES, an entity of
unknown corporate form; and DOES 1
through 50, INCLUSIVE,

Defendants.

CASE NO.: 3:21-cv-00360-RCJ-CLB

**JOINT STIPULATION AND
REQUEST FOR LEAVE TO AMEND
COMPLAINT**

Defendant ABBOTT VASCULAR INC. (“Abbott”), erroneously named ABBOTT LABORATORIES, and Plaintiffs RICHARD and JUDY JAGGARD (“Plaintiffs”), by and through their undersigned counsel, hereby submit the following joint stipulation and request for leave for Plaintiffs to file an amended complaint pursuant to Rule 15(a) of the Federal Rules of Civil Procedure:

WHEREAS, on March 15, 2021, Plaintiffs initiated the underlying action in the Second Judicial District Court situated in Washoe County, Nevada.

WHEREAS, on July 12, 2021, Plaintiffs’ served Abbott with the summons and complaint. *See* ECF No. 1-1.

WHEREAS, on August 10, 2021, Abbott filed a Petition for Removal to the United States District Court, District of Nevada. ECF No. 1.

WHEREAS, on August 13, 2021, defense counsel informed counsel for Plaintiffs that Abbott Laboratories was likely not the proper defendant-entity, and on August 18, 2021 informed counsel for Plaintiffs that Abbott Cardiovascular Systems Inc. was the owner of the subject product identified in the Complaint.

WHEREAS, the parties stipulate and agree to amend the complaint to add Abbott Cardiovascular Systems Inc. and to dismiss Abbott Laboratories from the action. The proposed First Amended Complaint is attached hereto as **Exhibit 1**.

WHEREAS, this stipulation does not constitute a waiver of any disputes, objections, and defenses Abbott Cardiovascular Systems Inc. may have as to the sufficiency of the claims and allegations asserted in Plaintiffs' First Amended Complaint, which may be asserted in a responsive pleading or by motion pursuant to Rule 12.

NOW, THEREFORE, IT IS HEREBY STIPULATED by and between parties hereto through their respective attorneys of records that Plaintiffs may, pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, file an amended complaint in the form of the First Amended Complaint attached hereto as **Exhibit 1**.

DATED this 26th day of August 2021

DATED this 26th day of August 2021

**GORDON REES SCULLY
MANSUKHANI**

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ORDER

IT IS SO ORDERED.


UNITED STATES MAGISTRATE JUDGE

DATED: August 26, 2021

EXHIBIT 1

EXHIBIT 1

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10
11
12 **UNITED STATES DISTRICT COURT**
13 **DISTRICT OF NEVADA**

14 RICHARD JAGGARD and JUDY JAGGARD,

Case No. 3:21-cv-00360-RCJ-CLB

15 Plaintiffs,

16 vs.

17 ABBOTT CARDIOVASCULAR SYSTEMS
18 INC., a California corporation, and DOES 1
19 through 50, inclusive,

20 Defendants.
21 _____ /

22 **FIRST AMENDED COMPLAINT**
23 **FOR DAMAGES AND STRICT PRODUCTS LIABILITY**

24 COME NOW Plaintiffs, Richard Jaggard and Judy Ann Jaggard, husband and wife, by and
25 through their attorneys, Mark Forsberg, Esq. and Oshinski & Forsberg, Ltd., and as and for their First
26 Amended Complaint in the above action, allege and aver as follows.

27 **GENERAL ALLEGATIONS**

28 1. Plaintiff RICHARD JAGGARD (hereinafter "Plaintiff" or "Jaggard") is an individual
and a resident of Minden, Nevada. He is, and at all times relevant to this action was, married to Plaintiff
JUDY JAGGARD (hereinafter "Judy").

1 2. Plaintiff is informed and believes, and thereon alleges, that Defendant ABBOTT
2 CARDIOVASCULAR SYSTEMS INC. (hereinafter "ABBOTT") is a corporation formed and existing
3 pursuant to the laws of the State of California. Upon information and belief, ABBOTT is a manufacturer
4 of medical devices, including devices used in cardiac intervention and has its headquarters and principal
5 place of business in California.

6 3. Plaintiffs are informed and believe, and thereon allege, that all times mentioned herein,
7 each of the defendants was the agent, servant, representative or employee of each of the remaining
8 defendants and, in engaging in certain acts hereinafter alleged, was acting within the course and scope
9 of said agency, service, representation or employment and materially assisted the other defendants.
10 Plaintiffs are further informed and believe, and thereon allege, that each of the defendants ratified the
11 acts of the remaining defendants.

12 4. Plaintiffs are ignorant of the true names and capacities whether individual, corporate,
13 associate or otherwise, of defendants sued herein as Does 1 through 50, inclusive, and therefore sues
14 said defendants by such fictitious names. Plaintiffs are informed and believe, and upon such
15 information and belief, allege that each of the defendants designated herein as a Doe defendant is legally
16 responsible in some manner for the events and happenings referred to herein and caused the damages
17 proximately thereby to Plaintiffs as hereinafter alleged. Plaintiffs will seek leave of court to amend this
18 complaint to show the true names and capacities of the defendants designated herein as Does when the
19 identities of the Does have been ascertained.

20 **JURISDICTION**

21 5. The federal court has jurisdiction under 28 U.S.C. § 1332 as the amount in controversy
22 exceeds the value of \$75,000, exclusive of interest and costs. Additionally, this action is between
23 citizens of different states. Plaintiffs are citizens of Nevada and Defendant is believed to be a citizen
24 of California.

25 **VENUE**

26 6. A civil action may be brought in this, the District of Nevada pursuant to 28 U.S.C. §
27 391(b)(2), because a substantial part of the events or omissions giving rise to these claims occurred in
28 this District, and in the unofficial Northern District.

STATEMENT OF FACTS

1
2 7. Plaintiff RICHARD JAGGARD was, at times relevant to this action, an active 65-year-
3 old man with a prior history of coronary stenting more than a decade earlier, who presented to the St.
4 Mary's Regional Medical Center ("SMRMC") emergency department on March 13, 2017, complaining
5 of a significant reduction in his tolerance of exercise over the previous two or three weeks, jaw
6 discomfort during exercise and reporting that the symptoms had progressed. He was accompanied by
7 JUDY.

8 8. Medical providers at SMRMC ordered a myocardial perfusion study which revealed a
9 small-to-medium sized area of basilar inferior wall ischemia.

10 9. JAGGARD was admitted to the hospital. On March 15, 2017, Devang Desai, M.D.
11 ("Desai"), the SMRMC Chief of Interventional Cardiology, performed procedures on JAGGARD
12 including right coronary cineangiography, left main coronary artery cineangiography, and the
13 placement of two stents in those blood vessels. The stents were placed in the coronary blood vessels
14 using a series of wires inserted at the right radial artery. Dr. Desai used a 190-centimeter cardiac
15 interventional wire, model 1001780, manufactured by ABBOTT (the "BMW wire"), in the performance
16 of the procedure on JAGGARD. Desai referred to this wire as the "BMW wire" in his operative notes
17 and the procedure monitor also identified the wire using this nomenclature.

18 10. After placing stents, Desai removed the BMW wire that had been inserted during the
19 procedure. Desai stated in his operative notes that the tip of the BMW wire "marker" had "stripped off
20 the wire into a septal perforator of mid LAD." Dr. Desai noted that he checked the wire and he
21 (incorrectly) concluded that the rest of the wire was intact. Dr. Desai finished the procedure and noted
22 that JAGGARD tolerated the procedure well and without complications.

23 11. Notwithstanding Desai's statement the BMW wire appeared intact, a substantial length
24 of a coil located at the distal tip of the BMW wire remained in JAGGARD's coronary blood vessels
25 and eventually uncoiled and extended into his right common carotid artery. The length of the wire left
26 in Plaintiff's coronary and carotid blood vessels was 15-30 centimeters long (as determined by two later
27 procedures JAGGARD underwent to remove the wire).

28 12. JAGGARD was discharged to his home in Minden, Nevada where over the next 14 days

1 he continued to suffer the same symptoms that resulted in his emergency department visit of March 13,
2 2017. He returned to the SMRMC emergency department on March 27, 2017, again accompanied by
3 JUDY. At this time he was seen by Sridevi Challapalli, M.D., identified by SMRMC as the Director
4 of Outpatient Cardiology and Nuclear Cardiology. Dr. Challapalli ordered a repeat cardiac
5 catheterization scheduled for the morning of March 28, 2017.

6 13. On March 28, 2017, Frank Carrea, M.D., another interventional cardiologist at SMRMC,
7 performed the cardiac catheterization on Plaintiff. During the coronary and left ventricle
8 cineangiography, Dr. Carrea identified the retained strand of the BMW wire, which he reported
9 “appeared to be much smaller than the usual 0.14 thickness of a guide wire.” He reported that the
10 retained strand of guide wire terminated with a radiopaque marker in a septal perforator. He observed
11 the BMW wire extending “through the proximal LAD, left main, ascending aorta and out into the
12 innominate and up into the right common carotid artery.” Dr. Carrea carried out a procedure in which
13 he attempted to “snare” the retained wire. During this procedure, he twice was able to “grab” the wire
14 but each time when he pulled on the BMW wire fragment, the wire broke. Dr. Carrea removed two
15 segments of wire, which when straightened appeared to be 3–4 inches long. Dr. Carrea, in consultation
16 with Mark McAllister, M.D., a radiologist, decided to stop the procedure because of the “fairly long
17 period of fluoroscopy” performed on JAGGARD. Dr. Carrea’s report indicates that JAGGARD was
18 under conscious sedation for 132 minutes during this procedure. Dr. Carrea noted in his report his
19 intent to consult with a cardiac surgeon to determine whether surgical removal of the guide wire would
20 be necessary.

21 14. Dr. Carrea referred JAGGARD to Athan Roumanas, M.D., a cardiac heart surgeon, who
22 Plaintiffs are informed and believe, is affiliated with Reno Heart Surgeons. The reason for his
23 consultation was consideration of coronary artery bypass grafting and removal of the retained guide
24 wire.

25 15. Dr. Roumanas recommended coronary artery bypass grafting to treat two additional
26 blocked coronary arteries, with an attempt at removing the retained piece of wire, noting that it might
27 not be possible to remove the wire, which was caught in the proximal left anterior descending artery
28 stent.

1 16. Dr. Roumanas also opined that another option would be to simply observe JAGGARD
2 and keep him anticoagulated. Dr. Carrea, on the other hand, identified in his notes the risk of wire-
3 related thrombosis if the wire were left in place.

4 17. JAGGARD requested a second opinion. At the recommendation of Dr. Challapalli,
5 JAGGARD was referred to an interventional cardiologist at University of California-Davis Medical
6 Center ("UC-Davis") who was believed to be willing to make an additional attempt to remove the
7 retained portion of the guide wire.

8 18. By this time, JAGGARD's condition had deteriorated such that he could barely walk
9 across the room to use the bathroom due to the severity of his symptoms. Plaintiff and JUDY decided
10 that because of his declining condition and their fears that he might not survive, they would contact
11 their two children, Jennifer and James. Both children travelled to UC-Davis to be with their father
12 during any procedure that was to be conducted at UC-Davis. JUDY feared for JAGGARD's life.

13 19. Plaintiff was discharged by air ambulance to UC-Davis for further treatment.

14 20. Plaintiff was admitted to the UC-Davis Medical Center on March 31, 2017.

15 21. At UC-Davis Medical Center, Plaintiff was under the care of Jason H. Rogers, M.D.,
16 and Jeffrey Allen Southard, M.D., who are listed in the hospital records as specializing in cardiology.
17 On April 1, 2017, Dr. Rogers performed a coronary catheterization of JAGGARD.

18 22. Dr. Rogers was able to retrieve the remaining retained portion of the BMW wire by
19 using "a torque device to wrap the two BMW guide wires around the dislodged guide wire fragment
20 and were successfully able to pull the wires back into the guide and retrieve the guide wire fragment
21 with no evidence of perforation or dissection."

22 23. Additionally, the cardiologist performed sequential rotational atherectomy, placing two
23 additional stents in Plaintiff's coronary arteries to resolve the blockages that were left untreated at
24 SMRMC. The cardiologist noted that a tiny distal fragment of the guide wire remained in JAGGARD
25 after the procedure.

26 24. Between March 16 and March 27, 2017, JAGGARD suffered severe pain, anxiety,
27 stress, and emotional distress resulting from his continued symptoms of blocked coronary arteries.
28 Moreover, after learning of the retained guide wire, Plaintiff and JUDY feared that the retained guide

1 wire could result in his imminent death or the long-term inability to enjoy the quality of life he enjoyed
 2 prior to his March 13, 2017 presentation at the SMRMC emergency department and treatment by Dr.
 3 Desai.

4 25. Plaintiff and JUDY continued to suffer severe anxiety, stress and emotional distress over
 5 concern of his prognosis after it was determined that the guide wire section had been left in his coronary
 6 arteries by Dr. Desai and after efforts to remove it were only partially successful and coronary bypass
 7 surgery was recommended.

8 26. JAGGARD suffered great distress during periods of wakefulness during the coronary
 9 catherization performed at UC-Davis when he would endure periods of conscious wakefulness during
 10 the procedure, each time fearing that he was dying.

11 27. Through the date of the filing of this complaint, Plaintiff and JUDY continue to suffer
 12 fear and anxiety regarding JAGGARD's condition, concern over JAGGARD's past and future medical
 13 care regarding the procedures he has undergone, and have lost substantially the quality of life they
 14 enjoyed prior to JAGGARD's treatment by Dr. Desai, as well as concern over the possible
 15 consequences of the fragment of the guide wire that remained in JAGGARD's body after most of it was
 16 removed at UC-Davis.

17 **FIRST CLAIM FOR RELIEF**

18 **(Negligence)**

19 28. Plaintiffs incorporate by this reference each and every allegation of their General
 20 Allegations and Statement of Fact into this, their First Claim for Relief, as if fully set forth herein.

21 29. Plaintiffs, RICHARD JAGGARD and JUDY JAGGARD, are individuals and are now,
 22 and at all times mentioned in this complaint were, residents of Douglas County, Nevada.

23 30. Defendant ABBOTT is now, and at all times mentioned in this First Amended Complaint
 24 was, a corporation formed, organized and existing under the laws of the State of California, with its
 25 principal place of business in the State of California.

26 31. Defendant ABBOTT is now, and at all times mentioned in this complaint was, in the
 27 business of designing, manufacturing, constructing, assembling, inspecting and selling various types of
 28 devices used in cardiac intervention, including the BMW wire used in the treatment of JAGGARD.

